Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Combinations for Export Under the Webb Act

By Joseph E. Davies

Attorney-at-Law, and former Chairman of the Federal Trade Commision

THE report of the Federal Trade Commission on Coöperation in Foreign Trade was issued on the thirtieth day of June, nineteen hundred and sixteen. The commission recommended that legislation be enacted to permit combinations solely for export trade, in order to remove existing doubt as to the legality of such organizations under the Sherman Law.

Provisions of the Webb Act

Largely as a result of this recommendation, the Webb Bill passed the House of Representatives on September 2, 1916. The original House bill contained two clauses that negatived the purposes of the bill. It was provided that export trade should not "be deemed to include the production, manufacture, *trading in or marketing within* the United States or any territory thereof, of such goods, wares or merchandise or any act in the course of such production or manufacture." Again it was provided that such action should be confined to such as "does not restrain the export trade of the United States." It would be manifestly impossible to obtain goods for export in the United States unless the organization were to trade or market in the United States. Further, it would appear that such a combination to be effective must "restrain export trade." The bill did not pass the 64th Congress.

The bill was, however, passed by the 65th Congress and approved April 10, 1918, with the objectionable features eliminated. In general terms, the act as finally adopted declared that nothing contained in the Sherman Law should be construed as making illegal a combination entered into for the sole purpose of engaging in export trade or acts in furtherance thereof providing there were no resulting restraints of domestic trade, or of the export trade of a domestic competitor, nor any act of any kind whatsoever which artificially or intentionally enhanced or depressed prices, substantially lessened competition or otherwise restrained trade in

the United States. The prohibition of Section 7 of the Clayton Act, prohibiting certain intercorporate stock holdings, was lifted so far as the acquisition of stock in such an export combination was concerned, if no domestic restraint of trade resulted. The prevention of unfair methods of competition in export trade against competitors engaged in export trade was vested in the Federal Trade Commission, even though such methods were employed without the territorial jurisdiction of the United States, as was also the general administrative supervision of the provisions of the act. The public records of the commission, consisting of the articles of incorporation and by-laws of the various combinations, show that American business men have been prompt to avail themselves of the provisions of the law.

Up to this date of writing, the statements required by this law have been filed by the following organizations:

Allied Construction Machinery Corporation
Allied Machinery Co. of America
Allied Mfgrs. Export Corp.
Allied Sugar Machinery Corporation
American International Steel Corporation
American Paper Exports, Inc.
American Parchment Export Co.
American Steel Export Co.
American Steel Export Co.'s Brazilian Corporation
American Webbing Manufacturing Export Corp.
Amsinck & Co., G. of Mexico, Inc.
Automotive Products Corporation
Copper Export Assn., Inc.
Cosmo Trading Co.
Cranz (Inc.) F.
Cranz Importing Co., F. E.
Deco Co.
Deister Miners Supply Co.
DeLima, Correa & Cortissoz, Inc.
Dodge & Seymour and
Dodge & Seymour (China, Ltd.) a subsidiary company
Douglas Fir Exploitation & Export Company
Dunnellon Phosphate Co. (The)
European & Far-Eastern Sales Co. (Inc.)
Export Trade Association (Inc.)
Factory Products Export Corporation
Fajardo Bros. & Co. (Inc.)
Franklin International Corp.
Galban Noecker & Co. (Inc.)
Galena Signal Oil Co. of Brazil
Harper & Co., Locke T.
Herzberg & Son, B.
Holsam Co. (Inc.)
International Clearing House of New York (Inc.)
Levy Co. Inc., A. A.
Manufacturers Agents Co. (Inc.)
Markt & Hammacher Co.
Markt & Schaefer Co.
Maxim Munitions Corporation
Mexican Importing & Exporting Corporation
M. P. Trading Co. Inc.
Muller, Maclean & Co. (Inc.)
Pan-American Exporters, Inc.
Parsons & Whittemore (Inc.)
Redwood Export Co.
Semtec (Ltd.)
Simmons Co., Thomas W.

Southern Products Co.
Sparks & Co., W. J.
Strong & Trowbridge Co.
Sydney Ross Co.
Texas Co. (South America) (Ltd.) The
United States Handle Export Co.
U. S. Office Equipment Export Assn.
United States Paper Export Association
Zaldo & Martinez Export Co. Inc.
Zoccola Co. (Inc.)

An examination of the charters filed would indicate that a great many, perhaps a majority of the combinations covered by them, have not complied with the act inasmuch as they are not *solely* engaged in exporting from the United States to foreign nations as the act requires.

It appears that export houses engaged in import as well as export trade seem to have found difficulty with the provision of the law which makes it apply solely to combinations for export. Many export houses, it would also appear, have filed reports out of an excess of caution in the fear of the penalty imposed by Section 5 of the act.

Since the passage of the act, the associations which have attempted to qualify under its terms for the most part have been in the corporate form. There are some few instances, however, of those who have merely combined, by contract or otherwise, under the terms of the law as "two or more persons, partnerships or corporations." While statements filed, generally speaking, have been designed to comply with the act, it is an interesting fact that by far the majority have failed to get completely within the terms of the act in that they have been organized for purposes in business other than that of solely engaging in exporting from the United States.[1] This is particularly significant, for unless they are formed under the express provision of the law, *solely for export trade*, they acquire no protection and are amenable to the provision of both the Sherman Law as to restraints of trade, or conspiracies to monopolize, and as well to Section 7 of the Clayton Law, forbidding interlocking stock ownership, as provided therein.

SALIENT FEATURES OF TYPICAL ORGANIZATIONS

It may be of interest to note some of the salient features of some of these typical associations. The capital authorizations vary as

[1] *See Annual Report Federal Trade Commission* 1918, p. 40.

do also the requirements as to the amounts to be paid in under the charter as a prerequisite to doing business. The following are typical:

	Authorized Total Capital Stock	*Amt. With Which Begun Business*
Allied Sugar Machinery Corporation	$200,000	$2,700
American Steel Exports	500,000	2,000
Douglas Fir Exploitation & Export Co.	200,000	Has been in business several years
Manufacturers Agents Co. Inc.	2,000,000 maximum	
	200,000 minimum	
American Paper Exports	1,500,000	800,000
Automotive Products Corp.	500,000	
American International Steel Corporation	1,000,000	2,000

Stock and Voting Power. The voting power of the stock of these organizations varies. Some give to each share of stock one vote. Others provide that voting power shall accrue alike to each stockholder regardless of the amount of stock owned. Still others base the control and voting power upon the proportion of production of each member the preceding year, or on combined considerations of proportionate production and stock ownership.

Limitations on Membership. There are also varying provisions with reference to eligibility for membership. Some of the organizations, such as the Copper Export Association, Inc., open their membership to all producers. Others limit membership to manufacturers or distributors of a certain class or of a certain territory; while still others prescribe that no other members shall be admitted except upon consent of the original signatories, who prescribe the terms of admission.

Limitation to Prevent Single Control. In order to prevent control of the association through the acquisition of stock by any one member, one lumber export association has made the following provision:

All of the stock owned by the stockholders in this corporation other than one share each, to be held by the stock trustees of this corporation, shall be assigned to and held in trust by the stock trustee or trustees whose power to sell and dispose of such capital stock so held in trust shall be limited to sales thereof to legitimate manufacturers of lumber on the Pacific Coast only, and such sales shall be further restricted so that no one manufacturer individually or through affiliated interests shall ever become a majority owner or holder or be able to exercise a dominating control of the capital stock of this corporation. Whenever any

person, firm or corporation shall make application to become a stockholder in this corporation and to purchase one or more shares of its capital stock and such application is approved by the Board of Trustees or such committee or officer as it shall thereunto authorize, a share or shares of the stock so held by such trustee or trustees shall be cancelled and a like number of shares in lieu thereof issued to such purchaser who shall forthwith endorse and deliver the same to said stock trustee or trustees to be held with like stock by such stock trustee or trustees. No sales or transfers of the capital stock of this corporation to any other than an actual manufacturer of lumber on the Pacific Coast shall be valid and in case of the death of any stockholder or the dissolution of any corporate stockholders or the insolvency or bankruptcy of any such stockholders or in case any stockholder voluntarily for a period of one year cease to continue in the manufacture of lumber, then and in that event this corporation shall have the right to call in, retire and cancel the capital stock so held by such stockholder upon payment to the heirs, executors, trustees or successors in interest of such person or corporation to an amount equal to the par value but not exceeding the par value of such stock.

Manner of Making Sales. Differing methods of making sales have been adopted, usually depending upon the intent of the organization as to whether it shall be purely coöperative on an expense basis only or whether it is designed to produce profit for the exporting corporation. One organization provides that all the foreign business of its members shall go through the association, invoices to be charged to the association and by it charged to the foreign purchasers, collected from them and when collected paid back to the proper party, minus a fixed percentage to be agreed upon from time to time sufficient to approximately cover the cost of carrying on the association. The cost of carrying on the association is to be prorated among members on the volume of sales of each party through the association, bad debts being treated as joint expenses. Funds are advanced by each member on which they are entitled to charge interest at 6 per cent until the proper adjustment can be made, this interest being recognized as part of the expense of the association.

Another association provides that its board of directors shall fix a minimum price for export sales. The executive committee then makes quotations within its discretion but not below this minimum price. The association receives 3 per cent on the amount of the sale from the mill accepting the order, such commission being known as a "flat brokerage" and is entitled to a further "overage brckerage" of one-half of the difference between

the price quoted by the member mill and the price at which the product is sold to the customer. The flat brokerage is to be paid ninety days after the shipping date of the order whether or not shipped, and the overage brokerage fifteen days after the due date of the invoice. Each member quoting includes the flat brokerage in his quotation.

Still another export association guarantees payment of all accounts sold by it and agrees to pay the manufacturer upon receipt of settlement from the customer, in any event not later than ten days from the date of receipt by the company at its office of complete shipping documents, the company deducting its commission which is $2\frac{1}{2}$ per cent of the F. A. S. mill value. A portion of this commission is to be spent in developing and increasing export trade. Others are to be assigned on the basis of quotas determined by the board of trustees. All export sales are to be made exclusively through the company. Orders assigned to a manufacturer are to be considered accepted unless objection is filed within five days from date of order. Contracts containing the above provisions are made for one year continuing in force thereafter unless terminated by ninety days' notice. Disagreements are to be decided by a two-thirds vote of the board of trustees.

Penalties and Settlements of Disputes. Provision is made quite commonly that failure to perform on the part of members shall be subject to penalty and that disputes shall be determined by the board of directors. Thus one association makes provision that in the event of the failure of a stockholder to observe and comply with the requirements and the conditions of the by-laws of any requirements of the board of trustees adopted in pursuance thereof or to carry out any provision or agreements of the contracts or to discharge any obligation to it, the board of trustees may repay or tender the stockholder the book value not exceeding the par value of said capital stock, less any indebtedness owing to the corporation by said stockholders, and may thereupon cancel said stock and re-issue said shares of stock either to the stock trustee or trustees held by said trustee of stock or to some person, firm or corporation who may become a stockholder in the corporation. In the event of the cancellation of the shares of stock it is provided that all right and interest of the original holder in and to the shares of stock shall immediately cease and determine and the

same shall be forfeited to the corporation. Another provides that if a member is unable to make delivery as agreed and an extension of delivery is not satisfactory to the vendee, the corporation may cancel the purchase and place the order with another member mill at prices, terms, etc., not exceeding those of the original sale. The original mill must under such circumstances pay one-half of the flat brokerage, the new mill paying the regular brokerages the same as if the order were received originally by it. In case of unreasonable default in delivery, a member is not entitled to further orders until the delinquency is made good.

Division of Profits. Provisions with reference to the payment of dividends upon the stock vary, dependent upon whether the purpose of the association's activities are to bring profits to its membership apart from the organization or to declare the same in dividends to stockholders.

The Douglas Fir Exploitation & Export Company provides that the board of trustees may declare dividends out of the surplus profits whenever deemed advisable but such dividends shall be limited to 7 per cent per annum upon the capital stock actually paid in. All surplus earnings after payment of operating expenses and the creation of a fund to meet estimated business losses and the payment of the 7 per cent dividend, are to be devoted to ways and means of increasing and extending foreign trade in Pacific Coast forest products provided, however, that the board of trustees may in their judgment create a fund for repaying the principal of the capital stock subscribed for in the corporation to the company so subscribing and paying to the said subscribers and their successors in interest.

The Manufacturers Agents Company, Inc., provides that the board of directors may fix the sum reserved as working capital and determine what part of the accumulated profits shall be declared in dividends to the stockholders and also determine the use of any surplus or net profits over and above the capital stock paid in.

The American International Steel Corporation provides that the board of directors may declare dividends out of the surplus or net profits at such times as they may determine and before payment of any dividends they may set aside out of the surplus or net profits such amounts as they think proper as a reserve to meet contin-

gencies or for equalizing dividends or for any other purposes deemed beneficial to the interest of the corporation.

The Copper Exports Association, Inc., provides that cumulative dividends at the rate of 7 per cent per annum and no more shall be paid on the preferred stock but none on the common having no par value of which each member is to have one share. Before declaring any dividends, the directors may reserve out of accumulated profits such sum or sums as they deem proper for a reserve fund to meet contingencies or for other purposes they think conducive to the interests of the association.

The Future of Combinations for Export

What the actual results from these organizations may be, it is too early to predict. The intensity of the nation's effort in the winning of the war, the scarcity of shipping tonnage for commercial use, the disruption of channels of international commerce, are all still felt; and operations planned are scarcely under way. The limitations in the law itself in the provision that makes these associations apply solely to export trade also tend to impede the most rapid progress, as most enterprises can be most effectively conducted by the integration of import with export. The provisions of the act in the public interest looking to the protection of the domestic consumer within our own territorial limits from the effect of these associations must also be closely scrutinized in the planning for foreign markets. Unfair methods of competition are inveighed against by the law in foreign commerce even though projected beyond our territorial boundaries, if inimical to domestic producers in the same manner as they are prohibited by the Federal Trade Commission Act, in interstate commerce. These provisions all call for careful scrutiny and judgment in the planning as well as in the projection of these enterprises.

An export agreement among western fir producers prior to the passage of the Webb Act proved highly profitable in increasing output and receipts, and it may be expected that similar results will accrue under these more favorable conditions. Conditions, obtaining in foreign parts, which brought about combined purchases there as against competitive sellers from the United States may perhaps be fairly expected to be offset by these organizations of sellers.

One of the distinctive features of international commercial rivalry prior to the war was the existence of the cartel, the comptoir and the "ring"—which gave great advantages to our competitors in the world's markets, certainly as against the smaller manufacturers who could not afford the hazard of foreign markets, with attendant overhead expense, credit risk and extended organizations. It may be that these organizations in modified form will be supplemented in some fields by government monopolies. If that be the development, it will probably be through still further extension of the principle of the Webb Act that we will be enabled to hold our own in the markets of the world.